

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Assembly Rev & Tax Analyst: Roger Lackey Bill Number: AB 1636

Related Bills: None. Telephone: 845-3627 Amended Date: 04-05-99

Attorney: Doug Bramhall Sponsor: \_\_\_\_\_

**SUBJECT:** Time For Filing Action

### SUMMARY

**This bill** would provide that the 90-day period for filing an action regarding income taxes begins on the date the Board of Equalization (BOE) determination becomes final.

### SUMMARY of AMENDMENT

The April 5, 1999, amendment incorporated the language provided by the department.

### EFFECTIVE DATE

This bill would be effective January 1, 2000, and specifies that it applies to all BOE determinations which become final on or after this date.

### SPECIFIC FINDINGS

Current **state law**, under Section 19382 of the Revenue and Taxation Code (R&TC), provides that a taxpayer, upon being denied a claim for refund by the Franchise Tax Board (FTB), may initiate legal action, against the FTB for the recovery of the whole or part of the amount paid.

**State law**, under Section 19384 of the R&TC, provides that the action provided by Section 19382 must be filed within four years from the last date prescribed for filing the return or within one year from the date the tax was paid, or within 90 days after a notice of action by the FTB upon any claim for refund, or **final** notice of action by the State Board of Equalization (BOE) on an appeal from the FTB action on a claim for refund, whichever period expires later.

**State law**, under Section 19347 of the R&TC, provides that a taxpayer may bring an action against the FTB for interest on the grounds set forth in the claim for the recovery of interest within the 90 days after an action by the FTB disallowing interest upon any claim for refund or, if a taxpayer appeals FTB's denial of interest to the BOE, within the 90 days after the mailing of the notice of determination by the BOE on the appeal.

**State law**, under Section 19334 and 19346 of the R&TC, provides that a determination by the BOE on an appeal of FTB's action on a claim for refund or a claim for interest is final upon the expiration of 30 days from the date of the determination unless within the 30-day period, the taxpayer or the FTB files a petition for rehearing with the BOE.

### Board Position:

<u>X</u> S	_____ NA	_____ NP
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_____ N	_____ OUA	_____ PENDING

### Department Director

### Date

**Gerald Goldberg**

**4/13/1999**

In that event the determination becomes final upon the expiration of 30 days from the date the BOE issues its opinion on the petition.

In the recent published decision of FTB v. Kvamme (63 Cal. App. 4<sup>th</sup> 794; Cal. Rptr. 2d 889 [Apr. 1998]), the taxpayers argued that the law was unclear as to when the 90-day statute of limitations for filing a court action begins. The taxpayer maintained that the 90-day period for filing suit could be interpreted to begin when the BOE determination becomes final (30 days after the BOE notice is issued). Under this interpretation, the taxpayer would have 90 days plus an additional 30 days, for a total of 120, to file a court claim.

The California Court of Appeal concluded that the word "final" in R&TC Section 19384 means the last action taken. Accordingly, the 90-day statute of limitations for filing a court claim is triggered by the BOE issuance (and mailing) of its original decision or opinion on the petition for rehearing of an administrative appeal, not 30 days later when the BOE action became "final" pursuant to R&TC Section 19334. Thus, the 30-day and 90-day time periods run concurrently.

**This bill** would provide that the 90-day period for filing an action begins on the date the BOE determination becomes final. Thus, the taxpayer would have 120 days to file an action.

#### Policy Considerations

Where state law provides a specific period of time for taking an action, that period of time should be clearly defined so that both the government and the taxpayer understand when that period begins and expires.

This bill would change the law, as announced in the recent FTB v. Kvamme decision, and provide that a taxpayer would have 90 days to file a court action from the date the BOE determination becomes final. This would benefit taxpayers by allowing 120-days to file a court action (30 days for the decision to become final and 90 days to file action once the determination is final).

#### Implementation Considerations

Implementing this bill would not significantly impact the department's programs and operations.

### FISCAL IMPACT

#### Departmental Costs

This bill would not affect the department's costs.

#### Tax Revenue Estimate

The specific data and information necessary to determine the impact of this proposal are not available. Any revenue loss and forgone interest would depend on the extent to which a taxpayer prevails on a claim for refund that would have been otherwise dismissed under current law.

To the extent additional claims are filed and taxpayers prevail, there would be a reduction in revenue.

According to departmental staff, it is estimated that approximately 50 cases on average (\$200,000) annually in court claims are dismissed due to the statute of limitations (90 days after notification). Assuming all these claims would be filed within 120 days and taxpayers would prevail in court proceedings, the revenue loss would be \$200,000 plus interest. It is also not known how many additional claims would be filed due to extending the statute for filing a court claim by 30 days. However, based on discussions with departmental staff, the total impact of this proposal is estimated to be minor (less than \$500,000 annually).

#### BOARD POSITION

Support.

At its meeting on December 16, 1998, the Franchise Tax Board voted to support this bill.